in our opinion, *per se* contrary to the principles of natural justice. In the present case the appellant had a fair hearing. He was dismissed after he had first been told what was alleged against him and hearing his defence or explanation. We were of the opinion that the written statements were properly admitted in evidence and there was no breach of the procedural provisions of the Regulation 7(5) and (6) of the Police Regulations.

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *J.B. Jeyaretnam & Co.*

SYED HUSSAIN BIN ABDUL RAHMAN ALKAFF & ORS. v. TEO EE HUP

[C.A. (Wee Chong Jin C.J., Sinnathuray & Lai Kew Chai JJ.) October 14, 1982]

[Singapore – Civil Appeal No. 7 of 1982]

Landlord & Tenant – Claim by landlord for possession – Landlord themselves in breach of provision of Control of Rent Act – Court's refusal to give redress – Appeal – Appeal dismissed – Control of Rent Act (Cap. 266), ss. 3, 5 & 15 (1) (g).

Landlord & Tenant – Rent-controlled premises – Claim for possession – Muslim Calendar and Gregorian Calendar distinguished.

The plaintiffs/appellants sought to recover possession of No. 191 Beach Road, a rent-controlled premises from the first defendant. They argued that he was in breach of a condition of his tenancy not to sublet which he did to four other defendants. Alternatively, the first defendant was collecting rents from his sub-tenants in excess of the permitted margin.

The facts revealed that in Rent Board Application No. 33 of 1974 the rent of the premises was increased from $224.40 to $278.60 per month. This entailed the serving of a Notice to Quit dated December 20, 1973 (the First Notice). The permitted rent increase was according to Gregorian Calendar whereas the rent actually collected by the plaintiffs from the first defendant as from the date of permitted increase was in accordance with the Agreement based on the Muslim Year which has one more month than the Gregorian Year.

The plaintiffs, having learnt that the first defendant had sublet parts of the premises, served a Notice to Quit dated July 28, 1977 (the Second Notice) on the first defendant.

The learned trial judge found, *inter alia*, that there had been a breach of clause (b) of the said Agreement, which would entitle the plaintiffs under the Agreement to terminate the tenancy and re-enter the premises. On issue (d) he found the Second Notice to be a valid one. The first defendant appealed. Rajah J. allowed the defendant's appeal (see [1982] 2 M.L.J. 142).

The plaintiffs appealed. (Before the appeal came on for hearing, however, by an Order of Court dated August 16, 1982, one Mr. Lim who had bought the premises in March 1982 was substituted as the appellant in place of the Trustees).

Held, dismissing the appeal: (1) the court was in agreement with Rajah J. that the trial court did not consider as it ought to have whether in all the circumstances of the case it was reasonable for an order of possession to be made against the tenant.

(2) having only recently become the owner of the premises it was clearly not reasonable that the appellant should succeed against the tenant who has been in the premises since 1966.

Case referred to:

(1) *Koh Chee Chong* v. *Chop Fook On* [1957] M.L.J. 197.

COURT OF APPEAL.

Kirpal Singh for the Appellants.

J.B. Jeyaretnam for the Respondent.

Cur. Adv. Vult.

Sinnathuray J. (delivering the Judgment of the Court): The appellants, the Trustees of the 1898 Alkaff Settlement who brought this appeal, as plaintiffs in District Court Summons No. 5601 of 1978, claimed possession of No. 191 Beach Road ("the premises") from the respondent, the first defendant in the action, on the ground that the respondent was in breach of a condition of his tenancy not to sublet. Before the appeal came on for hearing however, by an order of court dated August 16, 1982, Mr Lim Kain Yait who had bought the premises in March 1982 was substituted as the appellant in place of the Trustees. The appeal heard on September 14, 1982 was dismissed with costs. We now give our reasons.

The parties are hereafter referred to as "the landlords" and "the tenant".

It is not in dispute that the premises were subject to the provisions of the Control of Rent Act ("the Act") (Cap. 266); that the tenant was in possession of the premises under a tenancy agreement dated January 29, 1966 at the monthly rental of $224.40 payable according to the Muslim calendar; and that under clause 2(b) of the said agreement the tenant was prohibited from subletting without the landlords' consent.

It is also not in dispute that on the application of the landlords to the Rent Conciliation Board ("the Board"), by an order of the Board dated May 24, 1974, the rent of the premises was increased from $224.40 to $278.60 and the rent retrospectively took effect, according to the Gregorian calendar, on February 1, 1974. In order to make the application, the landlords had to comply with section 7(2) of the Act, the tenancy had to be determined according to law. This the landlords did by giving a notice to quit dated December 28, 1973 ("the first notice to quit") terminating the tenancy on January 31, 1974.

The claim of the landlords is that in 1977 they became aware that the tenant had sublet parts of the premises. They stopped collecting rent and served a notice to quit dated July 28, 1977 ("the second notice to quit") determining the tenancy according to the Muslim calendar on September 13, 1977.

As regards the subletting, the tenant does not dispute that there are subtenants on the premises. It is his case that they were already there on the first floor when in 1966 he took over the tenancy of the whole of the premises to operate a coffee shop on the ground floor thereof.

The learned Senior District Judge who heard the case found as a fact that three of the four subtenants were already on the premises in 1966, and that the landlords through their rent-collector were aware of the subletting. As regards the fourth subtenant, he found that there was subletting by the tenant in 1970 and that it was in breach of clause 2(b) of the tenancy agreement. He held that this "breach alone would entitle the [landlords] under the agreement to terminate the tenancy and re-enter the premises". He accordingly gave judgment for the landlords for possession of the premises, mesne profits and costs.

On an appeal by the tenant to the High Court, Rajah J. rejected the argument raised by counsel for the landlords that the first notice to quit had operated to terminate the contractual tenancy as between the parties, and that as from February 1, 1974, the date of the increase of rent by the Board, the tenant was merely a statutory tenant.

The learned Judge then considered the question whether the tenancy was validly terminated by the second notice to quit. He came to the conclusion that because the landlords had collected rent based on the Muslim calendar month of 13 months a year and not on the Gregorian calendar of 12 months a year as ordered by the Board, the rents collected were in excess of the permitted rent, and therefore, the second notice to quit was "tainted with this illegality" and "cannot be availed of as a necessary step in the action for possession". The learned Judge referred to *Koh Chee Chong* v. *Chop Fook On*[1].

The main ground on which the appeal was allowed was that, in giving judgment for the landlords on the ground that the tenant was in breach of clause 2(b) of the tenancy agreement, the learned Senior District Judge had exercised the power given to him in section 15(1)(b) of the Act, but that he had failed to consider the further requirement under the said provision whether it was "reasonable" that such judgment be given. Section 15(1)(b) reads as follows:

> "Where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under the provisions of this Act) so far as the obligation is consistent with the provisions of this Act, has been broken or not performed by the tenant and the court considers it reasonable that such an order or judgment be made or given;"

Rajah J. said:

> "It seems to me therefore that the learned trial judge gave judgment for recovery of possession under section 15(1)(b) of the Act. However, there was no declaration or finding as to the court considering it to be reasonable that such order or judgment be made or given as required by section 15(1)(b). No evidence other than this sub-letting had been led before the learned trial judge which was directed to the question of reasonableness. There was, therefore, nothing before him to which he could have directed his mind before giving his decision . . . This being so, on this count alone the judgment of the lower court cannot be supported and must be set aside.

At hearing of the appeal before us, the only ground on which Mr. Kirpal Singh for the appellant on behalf of Mr. Lim Kain Yait who had become the landlord of the premises argued the appeal was that the learned Judge ought not to have allowed the appeal on grounds not raised in the petition of appeal. But Mr. Kirpal Singh did not submit that the grounds on which the appeal was allowed were not canvassed at the hearing of the appeal. That they were raised at the hearing is clearly borne out in the Notes of Argument in the record of appeal. There was, therefore, no merit in the submission of counsel for the appellant.

We agree with Rajah, J. that the trial court did not consider as it ought to have whether in all the circumstances of the case it was reasonable for an

order of possession to be made against the tenant. The case of the present appellant, however, is far less sustainable than that of the Trustees. Having only recently become the owner of the premises, it was clearly not reasonable that the appellant should succeed against the tenant who has been in the premises since 1966. For these reasons, we dismissed this appeal with costs.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; J.B. Jeyaretnam & Co.*

CHIANG YIK MUN t/a BUNNY TAILOR v. CYC SHANGHAI SHIRT CO. PTE. LTD.

[A.C.J. (Sinnathuray J.) July 30, 1982]
[Singapore – District Court Appeal No. 19 of 1981]

Landlord and Tenant – Controlled premises – Monthly tenancy – Notice to quit in 1960 pursuant to increase in rent – Rent increase accepted by tenant – Ground floor sublet to appellant in 1965 – Death of tenant in 1977 – Effect of 1960 notice to quit – Whether appellant was a trespasser – Control of Rent Act (Cap. 266), s. 7(2).

The facts in this case were as follows. In 1960, Eastern Realty Co. Ltd., the owners of the premises at that time, served a notice to quit (the 1960 notice to quit) on one Foo who was a monthly tenant of the premises. The notice to quit was required to be served under section 7(2) of the then Control of Rent Ordinance pursuant to the company's application to the Rent Conciliation Board for the increase in rent. The increase in rent fixed at $75.79 by the Board was accepted by both parties.

In 1965 Foo sublet the ground floor of the premises at a monthly rent of $170 to the appellant. Foo died in 1977. In 1979 the company sold the premises to the present respondents.

The respondents contended that on the expiry of the 1960 notice to quit Foo became a statutory tenant and therefore, could not sublet the ground floor. The appellant was a trespasser and the respondents were entitled to possession of it. The learned Senior District Judge gave judgment in favour of the respondent.

The appellant appealed.

Held, allowing the appeal: (1) when the Board approved the increase of the rent, the order of the Board constituted an offer by the company of a new tenancy to Foo; and, when Foo paid the increased rent, a new contractual tenancy was created effective from November 1, 1960;

(2) in 1965 the appellant had become a sub-tenant of Foo and was therefore not a trespasser of the premises. He is therefore a protected tenant under the Control of Rent Act (Cap. 266).

Cases referred to:–

(1) *Summers* v. *Donohue* [1945] 1 All E.R. 599.
(2) *The Great Eastern Life Assurance Co. Ltd.* v. *Goh Ah Kow t/a Singapore Dry Cleaners & Anor.* [1980] 1 M.L.J. 277.
(3) *Sim Bang Hock* v. *Lim Kwong Sin* [1970] 1 M.L.J. 124.
(4) *Arunachalam Chettiar* v. *Kow Guan* [1963] M.L.J. 253.

DISTRICT COURT APPEAL.

Tan Kok Quan for the appellant.
Kirpal Singh for the respondents.

Cur. Adv. Vult.

Sinnathuray J.: The sole issue in this appeal from a judgment given in the District Court in favour of the respondents/plaintiffs for recovery of possession of the ground floor of No. 56 Selegie Road (the premises) is whether the appellant/defendant is a protected tenant under the Control of Rent Act (Cap. 266) (the Act) or a trespasser unlawfully in occupation of it. Though the story about the premises refers back to events that cover a period of over 20 years, the relevant facts can be briefly stated.

In 1960, Eastern Realty Co. Ltd. (the Company) were the owners of the premises. At that time, Foo Kai Tong (Foo) was a monthly tenant of it. By a notice to quit dated August 18, 1960 (the 1960 notice to quit), the Company determined the tenancy of Foo on September 30, 1960. The notice to quit was served on Foo, not to take ejectment proceedings against him, but for the Company to apply to the Rent Conciliation Board (the Board) to fix the rent of the premises. It is a requirement under section 7(2) of the Act for the tenancy to be determined "according to law" to make the application to the Board.

On November 22, 1960, the Board fixed the rent of the premises at $75.79 per month effective from November 1, 1960. Foo did not appear before the Board. He accepted the Board's decision and thereafter he paid the increased rent, and the new rent was always accepted by the Company without any reservation.

In 1965 Foo sublet the ground floor of the premises to the appellant at a monthly rent of $170. The appellant set up business there as a tailor under the firm name of "Bunny Tailor".

Next, sixteen years after the 1960 notice to quit, in 1976, by a notice to quit dated October